

# NOTICE OF AGENCY RULE-MAKING PROPOSAL

**AGENCY:** Department of Marine Resources  
**RULE TITLE OR SUBJECT:** Chapter 2 Aquaculture Lease Regulations

## CONCISE SUMMARY:

The Department received a certified petition from the Conservation Law Foundation requesting rulemaking on Chapter 2, Aquaculture Lease Regulations. The petition does not provide detailed information as to the principle reasons or expected operations of the proposed rulemaking.

New definitions would be added pertaining to finfish. Notification requirements and riparian proximity would expand from 1000 feet to 2000 feet. The fee structure would increase for acreages between 1 and 50 acres. Finfish application requirements would be expanded and require all other applicable permits be submitted with the application to DMR. Notification steps would be expanded and include a "Public Scoping Session". Public hearing intervenor applicants requirements would change including the removal of the requirement that applicants describe how an application would "substantially affect" them. The mandatory Department site review would be expanded; new requirements would include information from the nearest Harbormaster if a Town does not employ one and inclusion of private conservation easements or private "protected areas". The decision criteria would be expanded to include additional criteria including conservation valued lands, impact on State and citizen tourism goals, impacts on wild Atlantic salmon, and "cumulative or synergistic adverse far-field water quality and habitat changes". The conditions, monitoring and separation of finfish leases would be expanded to include such items as standards on bacterial mold, fallowing times, pen diaper use, additional reporting, single year classes and biosecurity protocols. Finfish bonds would increase to \$50,000.

The petition representatives will provide a short presentation at the beginning of the public hearings to introduce the proposed amendments. The Department proposes the amended regulation in accordance with 5 M.R.S.A. §8055.

**STATUTORY AUTHORITY:** 5 M.R.S.A. §8055

## PUBLIC HEARINGS:

Monday, May 6, 2002, 6:00 pm, Marine Trades Center, 16 Deep Cove Road, Eastport;

Tuesday, May 7, 2002, 6:00 pm, Middle School Cafeteria, 24 Forest Avenue, Ellsworth (off Route 1A Bangor Road);

Wednesday, May 8, 2002, 6:00 pm, Yarmouth High School Cafeteria, 286 West Elm Street, Yarmouth (access from rear parking lot)

**DEADLINE FOR COMMENTS:** **Monday, May 20, 2002**

**AGENCY CONTACT PERSON:** Andrew Fisk  
**Web site:** [www.state.me.us/dmr/rulemaking](http://www.state.me.us/dmr/rulemaking)

**MAIL WRITTEN COMMENTS TO:** Andrew Fisk  
**AGENCY NAME:** Department of Marine Resources  
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Augusta, Maine 04333-0021

**TELEPHONE:** (207) 624-6554  
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If you require accommodations due to disability, contact: Breena Whitcomb, at (207) 624-6567.

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*Proposed regulations:* Chapter 2 - Aquaculture Lease Regulations

*See 3 page summary below.*

*The entire 39-page document submitted with the petition is available electronically on the following web site:* [www.state.me.us/dmr/rulemaking](http://www.state.me.us/dmr/rulemaking)

*If you require a hardcopy of this document please contact Andrew Fisk, see above.*

*Please leave your name and complete mailing address if you reach his voice mailbox in order to expedite mailing the copy to you as quickly as possible.*

## 2.05 Definitions

2.05(1)(3) riparian proximity definition: would change 1000' to 2000'  
2.05(1)(3) existing and potential uses definition: would add recreational uses, habitats, and conservation "value" of lands  
2.05(1)(5) adverse effects definition: would expand other negative effects, escapement, and "cumulative and synergistic far-field affects"  
2.05(7) discharge definition: would expand to add leaching, fish feces, cultured fish, dead organisms, blood, viscera, antifouling – metals, wash waters  
2.05(1)(10) would add a new definition: "finfish aquaculture"  
2.05(1)(11) would add a new definition: Maine's Land Use Regulation Commission

## **2.10(1) Application requirements**

2.10(1) Form: grammar  
2.10(2) Fee: punctuation and would increase fee structure on finfish for the 1-10 and 11-50 acre categories

## **2.10(3) Required elements:** would add separate requirements for finfish applications

2.10(3)(1) would increase requirements for location description: 2000', LURC, include property lines to mean low water mark regardless of ownership  
2.10(3)(3)(A) would no longer allow discretion on requiring current speed and direction  
2.10(3)(3)(B)(1) & (2) grammar  
2.10(3)(4) would add all commercial and recreation to description of navigation uses  
2.10(3)(8) renumbering  
2.10(3)(9) would require a new description item of all other existing or potential uses  
2.10(3)(10) would add financial capacity to terminate a lease  
2.10(3) This would be a new section on additional finfish application requirements including the following:  
(1) substrate documented with a 2 foot contour bathymetric rendering of data collected by specific equipment (high power fish finder, seismic, diver and video, differential GPS);  
(2) semi- or quantitative sampled habitat assessment report describing community structure and function;  
(3) 30 days at 15 minute minimum intervals of tide, current, dissolved oxygen, temperature, salinity, current speed/direction where the number of sampling stations vary depending on depths +/- 30 feet and +/- 10 acres, +/- 25 acres and with tide info from a tide gauge constructed within 5 miles;  
(4) expand interference description with flora and fauna including Atlantic salmon, must use dye studies, drifters or calibrated circulation models and include intertidal areas also;  
(5) submit all other applicable permits required for proposed activities with application;  
(6) demonstrate compliance with land zoning of nearest point of land for light, noise, hours of operation;  
(7) demonstrate containers are escape and predator attack proof;  
(8) demonstrate petroleum containers won't leak if pens sink;  
(9) provide National Marine Fisheries Service and US Fish and Wildlife impact review.

## **2.15 Notice of Lease Application and Hearing**

2.15 would add new section (1) Public Scoping Session; applications would be distributed to all listed persons, agencies and news media, 5 persons requesting session make it mandatory. Applicant is required to attend. Notice of session must be distributed the same as initial notice.

### **2.15(2) Personal Notice**

2.15(2)(1) would encompass riparians within 2000' and add other landowners within 2000'; (2) would add nearest town if in unorganized territory; (4) would add LURC for unorganized territory; (5) would be a new section expanding notice to all known trade, industry, professional, interest groups, lobster zone council, municipal shellfish committees, other trade, industry or professional fishing group.

2.15(3) Public Notice, would add press release requirement for all applications 2 weeks before a hearing on all applications.

## **2.20 Intervention**

2.20(1) Forms, (2) would remove description of how an application would “substantially affect” an intervenor applicant; and expand how application could impact “surrounding area”.

2.20(1)(3) same as (2) above, would remove description of how an application would “substantially affect” an intervenor applicant.

## **2.27 Department Site Review**

2.27(2) Documented Information: would require inclusion of documentation that verifies distances to shoreline, locations of channels, moorings, public properties, privately owned lands with conservation easements or “protected areas” within 2500'; would add “adequate number of dives” to substantiate benthic conditions; if a town does not have a harbormaster use the nearest one; and would add requirement for harbormasters to characterize any boating or recreation use in the vicinity. Would add a provision that the Department could require that a baseline be redone or added to by the applicant.

## **2.31 Evidence**

2.31(4) spelling

## **2.37 Decision**

2.37(1)(1)(A)(1) Riparian Owner Ingress and Egress would be expanded to include the nearest riparian owner.

2.37(1)(1)(A)(2) Navigation would have “commercial and recreational” added, remove the consideration of navigational channels and expand impact to the general area. Examples of higher or lower consideration to an area used for barges in tow, high tide short cuts and structures within 50 feet of a channel would be removed.

2.37(1)(1)(A)(3) Fishing, would add “commercial and recreational”.

2.37(1)(1)(A)(new 4) would add a new section titled: Other Uses that would encompass all impacts to all uses and all resources including recreational boating, habitats, conservation valued lands, cultural heritage, scenic value of land, potential impact on conservation and tourism goals of the State and citizens.

2.37(1)(1)(A)(6) Existing System Support would add adverse affects, apply impact assessment of the entire lease term, negative effects on reproductive and feeding activities of flora and fauna, shellfish recruitment, escapees impact on wild Atlantic salmon, disease, “cross breeding”, “cumulative or synergistic adverse far-field water quality and habitat changes”.

**2.37(1)(1)(A)(2) Conditions:** would add mandatory standard condition to finfish leases on bacterial mold distribution on sea floor beneath and out to 5 meters, permit requirements to reduce operations if standard is exceeded that include: reduction of stock, feed, required fallowing time and pen diapers to collect feed and feces; and the DEP NPDES permit must be issued before a lease may be granted.

2.37(1)(2)(A) would add feeding, stocking density and chemical to harvesting methods.

2.37(1)(2)(C) would add navigation aids.

**2.37(2) Environmental Monitoring** would be expanded to include **Reporting**. Would add annual reports for all finfish leases over 1 acre, annual reports shall be expanded to include sediment chemistry, disease, chemical therapeutics, daily mortalities, escapees, August or September bottom video and dive, distribution of bacterial mold on bottom in addition to water chemistry, plankton and larval fish profiles, plus disease outbreak and escapees must be reported within 24 hours to the Department.

**2.37(3) Minimum Finfish Lease Site Separation**

2.37(3)(4) A new section “Single Year Classes and Fallowing” would be added with provision that only single years classes may be grown on a lease and a lease must be fallowed a minimum of 90 days before a new single year class is introduced.

2.37(3)(5) A new section, “Daily Mort Retrieval” would be added.

2.37(3)(6) A new section “Biosecurity Protocols” would be added for disease, pathogens and guidelines for handling of dead fish, drift rockweed, disinfecting procedures.

**2.40(2)(1) Lease Issuance bond or escrow requirement.** Finfish operations would increase to \$50,000 from \$5,000.

**2.45 Lease Renewal**

2.45(3) grammar in renewal standards would be changed to “failure to comply” instead of “not complied with” applicable rules; and the term “whether” would precede each section.

**2.60 Lease Transfer**

2.60(2) Procedure: grammar change

**2.64 Experimental Aquaculture Lease**

2.64(3) Department Site Review: would be mandatory.

**2.75 Minimum Lease Maintenance Standards**

2.75(2) would remove “injury” and replace “adverse effects” pertaining to avoidance of this type of impact to marine organisms.